

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

SARAH J. USSERY,

Plaintiff,

Case No.

v

Hon.

MENARD, INC.,

Defendant.

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James M. Giffels (P51459)  
Giffels Law Office, PLLC  
Attorneys for Plaintiff  
410 E. Centre Avenue  
Portage, MI 49002  
(269) 381-4172

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Thomas G. Herman (P27846)  
GARAN LUCOW MILLER, P.C.  
Attorneys for Defendant  
300 Ottawa Avenue N.W., Suite 800  
Grand Rapids, MI 49503  
(616) 742-5500

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**NOTICE OF REMOVAL OF CAUSE TO THE UNITED STATES  
DISTRICT COURT WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

TO: James M. Giffels  
Attorney for Plaintiff

NOW COMES the Defendant, Menard, Inc., by and through its attorneys Garan Lucow Miller, P.C., and in support of this Notice of Removal of Cause to the United States District Court Western District of Michigan, Southern Division, states as follows:

1. That on February 13, 2019, Plaintiff commenced this cause of action in the Circuit Court for the County of St. Joseph, State of Michigan, by filing Plaintiff's Summons and Complaint in which Menard, Inc., a Wisconsin corporation is named as Defendant. (**Exhibit A**)
2. Service of Process was effected by service on Defendant's registered agent on February 19, 2019. (**Exhibit B**).

3. That this action is a suit at common law of a civil nature and the amount involved, inclusive of interest and costs, and upon information and belief, based upon allegations and representations of the Plaintiff, appear to be in excess of the sum of \$75,000. (Plaintiff's Complaint – **Exhibit A**) as Plaintiff alleges:

3. On August 11, 2018, Plaintiff was a business invitee at Defendant's home improvement store located at 1001 Warner Drive in Three Rivers, Michigan, County of St. Joseph.
4. On this date, Plaintiff was a business invitee who was shopping with her husband at Defendant's store in Three Rivers, Michigan when the Defendant's employee negligently and without warning caused wood trim to fall directly onto Plaintiff's head in the check-out lane.
5. At all relevant times, Defendant owed to Plaintiff the following duties and obligations, among others:
  - a. to use ordinary care for the safety of customers;
  - b. to warn customers of such potential harm;
  - c. to avoid dangerous and reckless acts which could present customers with unreasonable risk of harm;
  - d. to act as a reasonable cashier under like and similar circumstances.
6. Defendant negligently breached all of the duties and obligations, among others.
7. As a direct and proximate result of Defendant's negligence, Plaintiff has sustained the following injuries and damages:
  - a. TMJ/TMD dysfunction
  - b. cervical/cranial myofascial disorder
  - c. pain, suffering and emotional distress
  - d. loss of normal enjoyment of life
  - e. continuing medical expenses, including expenses for
    - i. urgent care,
    - ii. physical therapy,
    - iii. continuing diagnostic tests and evaluations,
    - iv. prescriptive medicines, and
    - v. ongoing medical treatment
    - vi. other damages/injuries whose existence shall

become known through the course of litigation

4. Plaintiff's attorney has declined a request to stipulate to entry of an order that damages will be less than \$75,000.

5. That Defendant, Menard, Inc., shows this Honorable Court that this action involves a controversy between citizens of different states in that:

(A) Plaintiff, Sarah Ussery, is alleged to be a citizen of Michigan.

(B) Defendant, Menard, Inc., at the time of the commencement of this action, was, and now is incorporated under the laws of Wisconsin and is not a citizen of the State of Michigan.

(C) Defendant Menard, Inc., had at the time of commencement of this action, and now has, its principal place of business in the State of Wisconsin, and is not a citizen of the State of Michigan by reason of its principal place of business.

(D) Defendant Menard, Inc. is the owner and operator of the Three Rivers, Michigan store where this incident occurred.

6. That this notice of removal is filed with this Court within 30 days after receipt by the Defendant, Menard, Inc., on or about February 19, 2019, by service on the Defendant of the Plaintiff's Summons and Complaint. Therefore, this removal is filed as required by 28 USC §1446(b).

7. That written notice of filing this removal has been given to all adverse parties as required by law and a copy of the Notice of Removal has been filed with the Clerk of the Court for the County of St. Joseph, State of Michigan.

8. That attached is a copy of the process and pleadings that were served upon the Defendant in this cause (**Exhibit A**).

WHEREFORE, Defendant, Menard, Inc., herein, respectfully prays that this Honorable Court enter its order for removing this cause from the Circuit Court for the County of St. Joseph,

State of Michigan, to the United States District Court, Western District of Michigan, Southern Division.

Date: March 18, 2019

/s/ Thomas G. Herman  
Thomas G. Herman (P27846)  
Garan Lucow Miller, P.C.  
300 Ottawa Ave., N.W., Ste. 800  
Grand Rapids, MI 49503  
(616) 742-5500

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

and I hereby certify that I have mailed by United States Postal Service the paper to the following:

James M. Giffels  
Giffels Law Office, PLLC  
410 E. Centre Avenue  
Portage, MI 49002

/s/ Lori A. Bergy  
Lori A. Bergy